IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.996 of 2007

A.Anand .. Petitioner

Vs

1. The Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The Commissioner of Police,
   Chennai City Police, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to call for the records in Memo No.BDFGISSV/2007 passed by the 2nd Respondent and quash the same as illegal and consequently directing respondents to produce the Detenu Settu S/o. Sahayam aged 27 years who now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhikumar

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The order of detention dated 31.5.2007 made in Memo No.229/BDFGISSV/2007 passed by the second respondent dubbing one Settu, who is the uncle of the petitioner, as Goonda under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), is being challenged in this writ petition.

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2. The ground case which led the detaining authority to pass the order of detention dated 31.5.2007 is that on 6.4.2007, when the police party attached to K1 Sembium Police Station were on a hunt for absconding accused, they stumbled upon the detenu and his associates near Perambur Thangal Cemetry. On seeing the police party, the detenu and his associates tried to flee the spot. However, the police party surrounded and tried to apprehend them. In the melee, the police personnel were kicked and beaten by the detenu and his associates and unable to bear the pain, they fell down on the ground. The detenu and his associates then went on a violent spree and pelted stones against the police, which scattered on the road and thus created panic in the minds of the public. Taking advantage of the panic situation, the detenu and his associates made their good escape from the spot. On the basis of the special report, a case was registered in Cr.No.626/2007 under Sections 332, 323, 325, 336, 307 and 506(ii) IPC.

3. The second respondent, taking note of the above ground case and one adverse case, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in preparing the rejection order.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be

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considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 31.5.2007, a representation was made on behalf of the detenu on 2.7.2007, which was received by the Government on 3.7.2007. Remarks were called for from the detaining authority on 4.7.2007, which was received by the detaining authority on 6.7.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 9.7.2007 and on receipt of the same on 11.7.2007, the detaining authority sent it to the Government on 12.7.2007 and the same was received on 13.7.2007. Thereafter, the file was submitted on 16.7.2007 and it was considered by the Under Secretary and Additional Secretary on 17.7.2007. The file was considered by the Minister on 18.7.2007. However, the rejection letter was prepared on 25.7.2007, after a delay of eight days, which is not properly explained. Even taking note of the intervening holidays, viz., 21.7.2007 and 22.7.2007 (being Saturday and Sunday), the delay of six days in preparing the order of rejection, is admittedly unexplained and inexcusable. Thereafter, the order of rejection was sent on 26.7.2007 and served on the detenu on 27.7.2007.

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7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The

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Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of six days in preparing the order of rejection, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government
   Prohibition & Excise Department
   Fort St. George, Chennai 9.

2. The Commissioner of Police,
   Chennai City Police, Chennai.

3. The Superintendent of Central Prison
   Puzhal, Chennai.

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4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
Public [Law and Order],
Fort St. George, Chennai 9.

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